

# Order

Michigan Supreme Court  
Lansing, Michigan

April 15, 2022

Bridget M. McCormack,  
Chief Justice

162311

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 162311  
COA: 342965  
Emmet CC: 17-004527-FH

BENONI JONATHAN ENCISO,  
Defendant-Appellant.

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By order of October 8, 2021, the prosecuting attorney was directed to answer the application for leave to appeal the October 8, 2020 judgment of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing whether: (1) a defendant's unpreserved claim regarding his or her lack of physical presence at sentencing is subject to review for plain error; (2) lack of presence at sentencing is structural error; (3) if the error is not structural how a defendant could show the error affected the outcome of the lower court proceedings; and (4) if the error is structural how a prosecutor could rebut the presumption that the error seriously affected the fairness, integrity or public reputation of judicial proceedings. See *People v Davis*, \_\_\_ Mich \_\_\_ (2022) (Docket No. 161396). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

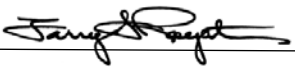
The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 15, 2022

  
Clerk